

### **REMARKS**

Applicant respectfully requests reconsideration of this application in which claims 1 and 16 have been amended and new claim 25 has been added.

#### **The rejection under 35 U.S.C. §101 can be withdrawn.**

Claim 1 recites using a fatigue machine. That ties the method to a machine in a manner that satisfies the requirements of 35 U.S.C. §101 as interpreted in the *In re: Bilsky* decision of the Court of Appeals of the Federal Circuit. Therefore, the rejection can be withdrawn.

Applicant also presents a Replacement Sheet of drawings including an amended version of Figure 1. No new matter is introduced as the additions to Figure 1 are consistent with the description on page 3 as originally filed.

#### **The rejection of claims 16 and 20 under 35 U.S.C. §103 based on *Clarke* and *Barrett* must be withdrawn.**

Applicant appreciates the detailed explanation regarding the Examiner's interpretation of the *Barrett* reference. Claim 16 now recites a rate over time and a constant load. Even the most recent explanation of the rejection does not include a constant load. The rejection should be withdrawn.

#### **The rejection of claims 16 and 20 under 35 U.S.C. §103 based on the *Robar* and *Barrett* references must be withdrawn.**

As already explained, the *Barrett* reference does not contain any teaching regarding determining a rate of degradation over time for a constant load. Therefore, there is no *prima facie* case of obviousness and the rejection must be withdrawn.

Applicant thanks the Examiner for the indication of allowed claims and allowable subject matter. For the reasons above, Applicant respectfully submits that all claims are allowable.

Applicant believes that additional fees in the amount of \$52.00 are required for one additional claim in excess of twenty. A Credit Card Payment Form is attached. The Commissioner

is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional fees or credit the account for any overpayment.

Respectfully submitted,  
CARLSON, GASKEY & OLDS

By: 

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